



#12 100 3/7/02
PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Keqiang WU et al.

Application No.: 09/645,337

Filed: August 25, 2000

Group Art Unit: 1638

Examiner: Ashwin Mehta

Docket No.: 104107.01

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For: **REPRESSING GENE EXPRESSION IN PLANTS**

RESPONSE TO RESTRICTION AND ELECTION OF SPECIES REQUIREMENT

Director of the U.S. Patent and Trademark Office
Washington, D.C. 20231

Sir:

In reply to the Restriction and Election of Species Requirement mailed January 30, 2002, Applicants provisionally elect Group I, claims 1-9 and 11-20, and the Species SEQ ID NO. 3, with traverse.

As set forth in the Office Action, restriction to one of the following inventions is required under 35 U.S.C. §121:

- I. Claims 1-9 and 11-20;
- II. Claim 10;
- III. Claim 21;
- IV. Claim 23;
- V. Claims 25 and 27; and
- VI. Claim 28.

Applicants hereby elect Group I, claims 1-9 and 11-20, with traverse.

The Office Action also requires that if Group I is elected, selection of a single nucleotide or amino acid sequence within the elected group is required. Applicants hereby

elect SEQ ID NO. 3, with traverse. Regarding Species selection, Applicants submit that the non-elected Species SEQ ID NOs. 1, 2 and 4 should be searched with the selected Species SEQ ID NO. 3.

The present invention is directed to histone deacetylase genes and proteins, and each of SEQ ID NOs. 1-4 represent members of the histone deacetylase family. Figure 3 of the present application illustrates a sequence alignment of SEQ ID NOs. 1 and 2. The close relationship of SEQ ID NOs. 1 and 2 is shown by the shading of identical amino acid residues. In addition to the very high sequence homology illustrated by the shaded regions in Figure 3, it is shown by asterisks that SEQ ID NOs. 1 and 2 are identical at each amino acid residue that has a potential role in deacetylase activity. See page 7, lines 16-19 of the present specification.

Similarly, Figure 4 of the present application illustrates a sequence alignment of SEQ ID NOs. 3 and 4. The close relationship of SEQ ID NOs. 3 and 4 is shown by the shading of identical amino acid residues. In addition to the very high sequence homology illustrated by shaded regions in Figure 4, it is shown by an asterisk that SEQ ID NOs. 3 and 4 are identical at the amino acid residue that has a potential role in deacetylase activity. See page 7, lines 21-24 of the present specification.

Because the non-elected Species are very similar to the elected Species, Applicants submit that, when searching the elected Species SEQ ID NO. 3, the Examiner would encounter the non-elected Species SEQ ID NOs. 1, 2 and 4.

Applicants also submit that the subject matter of all of Groups I-VI are sufficiently related that a thorough search for the subject matter of any one of these Groups would encompass a search for the subject matter of the remaining Groups.

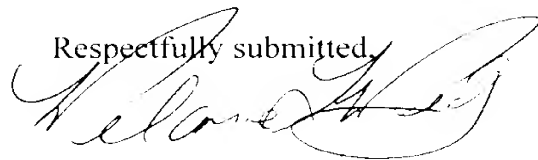
Thus, it is respectfully submitted that the search and examination of the entire application could be made without serious burden. See MPEP §803 in which it is stated that

"if the search and examination of the entire application can be made without serious burden, the Examiner must examine it on the merits even though it includes claims to distinct or independent inventions" (emphasis added). It is respectfully submitted that this policy should apply in the present application in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office.

It is further noted that at least elected claims 1-8 and 14-16 are generic claims. Thus, if the generic claims are determined to be allowable in the context of the elected Species, the generic claim must be searched in the context of the remaining non-elected Species.

For all of these reasons, withdrawal of the Restriction and Election of Species Requirement is respectfully requested.

Respectfully submitted,



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